before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Grandfathered Short-Spaced	)	MM Docket No. 96-120
FM Stations	)	RM-7651

FURTHER REPLY COMMENTS OF RICHARD L. HARVEY

The Commission in the subject Notice of Proposed Rule Making proposes to lift restrictions that unnecessarily impede flexibility as to site selection for one category of grandfathered short-spaced FM station. Richard L. Harvey, the grantee of the construction permit for WTUC Tuckerton-NJ, has file comments requesting that the Commission include the currently grand-fathered Class A FM stations (3000 watts ERP and 100 meters antenna HAAT) that became short spaced as of October 1, 1989("1989-grandfathered Class A stations") in the proposed rule changes pertaining to second-adjacent-channel and third-adjacent-channel protection criteria.

In our comments we stated that section 73.215 of the rules fails to provide any site flexibility for 1989-grandfathered Class A stations with regard to second-adjacent and third-adjacent channels to other Class A stations since section 73.215e specifies a *minimum* distance separation that is *greater* than the original rules under which these stations were authorized. These Further Reply Comments address the Reply Comments that were filed by the National Association of Broadcasters ("NAB") on Oct. 4, 1996.

The Need for Flexibility

The NAB failed to address the specific needs of 1989-grandfathered Class A stations. However, the NAB does recognize that there is a need to expand the focus of the proceeding. The NAB states:

> NAB's position also is founded on the recognition that scores of FM stations -- not just the grandfathered, short-spaced FM stations that are the focus of this proceeding -- may soon be required to seek new antenna sites.
>
> Another consideration supporting our views in this "grandfathered short-spaced" proceeding is the growing, general need for flexibility in modifying existing FM stations' facilities. Each day, stations are finding their tower leases expiring and facing non-renewal. Local zoning authorities are often providing significant obstacles to stations seeking to modify facilities at locations that meet all relevant FCC interference-protection criteria. *But, of even greater consequence-- and the subject of thorough discussion among the members of our ad hoc engineering group-- is the likelihood of massive numbers of FM stations, currently mounted on TV towers, needing to be relocated to new tower sites upon these TV facilities' modification to accommodate the transition to digital technology.* [emphasis added]
>
> That is, sooner or later, a majority of FM stations -- regardless of station class or regulatory history -- will be facing an involuntary site move.

The NAB having stated that the majority of FM stations will need additional site flexibility, then however, concludes that the current proceeding should be restricted to only pre-1964 grandfathered short-spaced stations. This conclusion seems to reflect the interest of the stations which contributed to the NAB response -- "broadcast group-owned companies".

The conclusion that stations that have co-located with TV towers is *"of greater consequence"* is unfounded. No study shows that more FM stations are co-located on TV

towers than not - - nor that more FM stations co-located on TV towers will experience involuntary site moves that those that are not co-located. The NAB's conclusion that further site flexibility must wait until the needs of the FM stations that are co-located with TV towers becomes critical is wrong. The need is fact today. The conclusion also clearly favors major market stations since FM co-location with TV is usually the case there.

The current problem where stations are finding their tower leases expiring and facing non-renewal comes from the greater competition for tower space from Cellular and Personal Communication Services. The difficult zoning situations are also the result brought on by the boom in Cellular and PCS. Zoning officials are less likely to allow additional towers into their communities and they view broadcast towers as even less desirable than cellular or PCS towers since they are generally shorter in height and operate at lower power.

Impact of Second/Third Adjacent Signals on Receivers

The NAB agrees with many of the commenters that the "changes to grandfathered, short-spaced stations may actually result in *reduced* interference to the service of other, potentially affected FM broadcasters." The NAB also states in a footnote:

> As interfering signals are brought closer together, approaching co-location, actual interference areas may decrease -- depending upon signal strength variations due to natural and man-made signal shadowing, antennas pattern aberrations, signal polarization, etc.

We agree with this statement, but we think that the likelihood that interference will be reduced when the second adjacent signal sources are brought closer together is very

high and the dependencies listed are not common especially given the low probability and limited area of potential interference.

The NAB studied five consumer radios. The two automotive receivers had excellent rejection of second adjacent signals. The tests showed that the "portable" and "hi fi" receivers had lower performance. This is not surprising; however, the NAB study didn't examine the real world use of these receivers. The "portable" and "hi fi" receivers are used often with directional antennas(telescoping whip or wire antennas). The users of these receivers are accustomed to positioning the antennas or re-positioning the radio itself to optimize reception. . In in doing so, they are improving performance. Obviously, the automotive radios do not offer this capability and manufactures have compensated by improving their performance.

The NAB also concludes that this performance data does "not support general relaxation of second adjacent-channel separation rules." This conclusion is odds with the NAB's statement that the potential of second-adjacent interference is lessened when the signal sources are moved closer together.

Proposed Showings for Flexibility

The NAB proposes that a grandfathered station must support a request for flexibility with one or more of four "showings". The first two suggested by the NAB are:

1. That the modification would result in a net decrease in the number of listeners experiencing interference caused by the station proponent to the signals of other FM stations;

2. That the modification would result in a net *decrease* in the land area of interference *caused* by the station proponent to the signals of other FM

stations.

Since the area where potential second/third adjacent interference could occur is restricted to a small area around the transmitter site, determining the *net* effects of relocating a transmitter would be very difficult. The entire potential problem is limited to very few people in a very small area. The *net* effect would include even smaller numbers. This is further compounded because many transmitter moves would involve more than one second/ third adjacent situation, some of which would increase and some decrease the potential of interference. Perhaps a simple rule could be contrived but then it might not reflect the actual outcome of the transmitter move. A more effective way would be to consider second/third adjacent channel effects along with blanketing effects. This approach requires that the station making the move correct any problems.

Another NAB proposed rule is:

> 3. That the transmitter site shift would not be to locate to a location near a major traffic thoroughfare -- a site move that could create massive interference to the mobile radio audience;

The study conducted by the NAB showed that two representative automotive receivers did not have second adjacent interference problems. Therefore this rule is unnecessary. Also the definition of "major traffic thoroughfare" would be quite troublesome.

The final proposed rule states:

> 4. That the modification of the transmitter site would be to a site within a "buffer zone" around the current transmitter site....

This rule depending on the size of the "buffer zone" may fail to address the problem facing the station seeking flexibility. If the zone is small, all potential new sites could fall into the same zoning district. There may be no existing towers in the "buffer zone" area. It is not clear what would be the criteria that should be used to determine the "zone". The current rules that require that stations provide certain minimum signal level over their city of license and also restrict the transmitter location due to spacing to co-channel and adjacent channel stations provide similar restrictions to re-location and are well defined.

Summary

In summary, we believe that the NAB study provides data that supports many of the comments filed. However, the NAB's position that the FCC needs to restrict flexibility to only one narrowly defined class of grandfathered short-spaced station is not support by their data. Moreover, their suggestion that additional flexibility must wait until stations which are co-located with TV stations are force to re-locate would be wrong for the FCC to adopt. Additionally, the NAB proposed rules are too complicated, unworkable and not necessary. We believe that potential second/third adjacent interference is best covered as part of the blanketing interference rules.

Respectfully submitted,

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